

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/937,715	RUSSELL ET AL.	
	Examiner Sarah Song	Art Unit 2874	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to amendment filed 28 June 2005.
2.  The allowed claim(s) is/are 1-20,22-27,30 and 33-48.
3.  The drawings filed on 01 October 2001 are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some\*    c)  None    of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

- |                                                                                                                      |                                                                                        |
|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)                                                     | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                 | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____. | 7. <input type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material           | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|                                                                                                                      | 9. <input type="checkbox"/> Other _____.                                               |

**DETAILED ACTION**

1. Applicant's communication filed on June 28, 2005 has been carefully studied by the Examiner. The arguments advanced therein, considered together with the amendments made to the claims, are persuasive and the rejections based upon prior art made of record in the previous Office Action are withdrawn. Claims 1-20, 22-27, 30, 33-48 are pending.

***Allowable Subject Matter***

2. Claims 1-20, 22-27, 30, 33-48 are allowed.

3. The following is an examiner's statement of reasons for allowance: Claims 20 and 22-27 are allowable for the reasons stated in the Office Action dated June 13, 2003.

4. Regarding claims 1-19, 30 and 33-48, Borrelli et al. discloses an extruded fiber and therefore does not teach or render obvious a photonic crystal fiber comprising canes. Additionally, although the manner in which a device is made generally does not determine patentability of the device itself, in this case the claimed fiber wherein the regions of higher refractive index are made of canes distinguishes structurally (as a result of the interstitial holes between the canes) from the fiber of Borrelli et al. as can be seen from Figures 1 and 3 of the present application.

5. Broeng et al. (U.S. Patent 6,845,204 newly cited) discloses a photonic band gap fiber; however the region of lower refractive index does not have a longest transverse dimension which is sufficiently large to provide that light is substantially confined in the lower refractive index region as discussed in column 24, lines 12-15. Broeng et al. also states that "full confinement of

light in air is—in principle—possible”, but does not disclose any embodiment to support the statement.

6. Additionally, the prior art of record does not disclose or reasonably suggest the photonic crystal fiber or preform comprising canes and wherein a cavity has a transverse dimension greater than a corresponding dimension of any of the canes.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah Song whose telephone number is 571-272-2359. The examiner can normally be reached on M-Th 7:30am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney Bovernick can be reached on 571-272-2344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sarah Song  
Patent Examiner  
Group Art Unit 2874